

VETERANS MEDICAL CARE ACT OF 1971

SEPTEMBER 27, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TEAGUE of Texas, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany H.R. 10880]

The Committee on Veterans' Affairs, to whom was referred the bill (H.R. 10880) to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery; and for other purposes, having considered the same, report favorably thereon, by voice vote without amendment, and recommend that the bill do pass.

BACKGROUND OF THE BILL

Following a series of public hearings in the second session of the 91st Congress, the Subcommittee on Hospitals recommended to the full committee a draft bill to provide improved medical care to veterans, to extend care and treatment to certain dependents and survivors of veterans, and to improve in various areas of the VA medical service the recruitment and retention of career personnel. A draft bill was subsequently introduced as H.R. 18252, 91st Congress. The initial reports of the Veterans' Administration on the bill contained expressions of concern over certain provisions which, it was stated, "present serious problems of policy and feasibility that require completion of studies now under way before we can recommend their consideration by your committee * * *. While we have endorsed some of the provisions, we cannot recommend favorable consideration of H.R. 18252 by your committee at this time." This position of the executive branch was taken late in the session and the Committee felt it preferable to defer further action in the 91st Congress.

The predecessor of this bill, H.R. 37, as introduced was identical with H.R. 18252 of the last Congress. On May 3, 1971 the Administrator of Veterans' Affairs reported to the committee on H.R. 37 and a number of other bills having identical or similar purposes. The Administrator concluded that while he could not recommend favorable consideration of any of the bills in their present form, he would favor the enactment of H.R. 37 if amended in accordance with "our suggestion." The suggested substitute was submitted to the committee under the same date and both communications are included herein.

In May of 1971 the new Subcommittee on Hospitals conducted extensive hearings concerning the entire VA medical program. Included on the agenda were H.R. 37, a number of similar bills, and H.R. 8177, a bill which represents the VA draft substitute bill. The committee has given careful consideration to the specific recommendations of the Veterans' Administration and the reported bill now embodies most of such recommendations. In fact, it is gratifying to note that of the 17 separate provisions now contained in this omnibus bill, 12 of them have the specific endorsement of the Veterans' Administration and two additional provisions appear to be without objection to the agency.

PURPOSES OF THE BILL

The purposes of the bill are set forth in broad terms in the title. More specifically, its enactment would accomplish the following:

(1) Permit the furnishing of pre- and post-hospital medical services on an outpatient or ambulatory basis to any person eligible for hospital care under section 610 of title 38, or where such care is reasonably necessary to obviate the need for hospital admission. These services include, in addition to medical examination and treatment, optometrists' services, dental and surgical services, as are now available in the case of non-service-connected disabilities, for treatment after the veteran has been scheduled for admission for hospital treatment or, following hospitalization, in connection with treatment he received while hospitalized.

(2) Provide pay differentials for nurses performing duty between the hours of 6 p.m. and 6 a.m.; from midnight Saturday to midnight Sunday; or on Federal holidays. Provides overtime pay for hours of service in excess of 40 hours during nurses' administrative work week, or in excess of 8 hours a day.

(3) Direct VA, in order to more effectively provide complete medical and hospital care and treatment for veterans and to assist in providing an adequate supply of health service personnel to the Nation, to the extent feasible without interfering with medical care and treatment of veterans, to develop and carry out a program of training and education of health service personnel, acting in cooperation with schools of medicine, and other institutions.

(4) Provide for furnishing of hospital and medical care, to the extent that it does not interfere with care for eligible veterans, to the wife or child of a totally and permanently disabled service-connected veteran and to the widow or child of a person who has died as the result of a service-connected disability.

(5) Authorize the appointment of two additional Assistant Chief Medical Directors, who shall be individuals qualified in the administration of health services who are not doctors of medicine, dental

surgery or dental medicine. The bill reflects the new designations of Director of the Pharmacy Service and Director of the Dietetic Service to correspond to the other Director of Services titles, such as Chaplain and Nursing. It also establishes the position of Chief Optometrist and prescribes compensation to be paid to such personnel. It also establishes a new Director grade in the "Nurse Schedule", which is intended to recognize the difficult managerial and professional responsibilities inherent in the position of Chief Nurse in the very largest and most complex VA hospitals, and in the positions of the top program officials in the headquarters Nursing Service in the Department of Medicine and Surgery. Such responsibilities inherent in other Chief Nurse and managerial nurse positions can be similarly recognized, as appropriate, by use of existing grades in the Nurse Schedule.

(6) Prescribe the circumstances under which physicians, dentists or nurses may perform professional services other than those performed as full-time employees of the Veterans' Administration, and prohibits payments for such services.

(7) Permit furnishing of nursing home care in public or private nursing homes not under jurisdiction of the Administrator for persons who have been furnished care in any Armed Forces hospital, thus removing the requirement that these persons be first hospitalized in a VA hospital before being provided with such care.

(8) Authorize VA to enter into contracts to provide scarce medical specialist services at VA facilities, with medical schools, clinics, or any other group or individual capable of furnishing such services, including medical support personnel (physicians, dentists, nurses, technicians, etc.).

(9) Clarify current law with regard to contracts with clinics (in addition to medical schools as now permitted) and other groups or individuals for securing certain specialized medical resources.

(10) Provide additional authority for temporary full-time appointments of various types of medical personnel for a period of time not to exceed 1 year. Such appointments are now authorized for a period of not more than 90 days.

(11) Clarify and extend protection in malpractice suits brought against VA medical personnel.

(12) Permit reimbursement of veterans in VA hospitals and domiciliaries for loss of personal effects sustained by natural disaster while such effects were stored in those VA facilities. Current law permits reimbursement only in case of loss by fire.

(13) Permit VA to lease without advertising, buildings or lands to public or nonprofit organizations, and to consider maintenance, protection, or restoration, by the lessee, as all or part of payment received under the lease. Prior to the execution of any such lease, the Administrator will be required to give appropriate public notice of intention in the press of the community in which the lands or buildings to be leased are located.

(14) Authorize reimbursement of certain veterans under limited circumstances, for reasonable value of hospital care or medical services, including necessary travel expense, when services are furnished from sources other than the VA. Eligible veterans are those receiving treatment for a service-connected disability, or a non-service-connected disability associated with a service-connected disability (or veterans in need of vocational rehabilitation because of a service-connected

disability whose training would be interrupted or delayed because of the illness). Services must be rendered in a medical emergency and VA or other Federal facilities must not be feasibly available.

(15) Clearly delineate the authority of the Administrator, to the extent feasible without interfering with medical care and treatment of veterans, to participate in programs under the Heart Disease, Cancer, and Stroke Amendments of 1965 of the Public Health Service Act. It is specifically provided that nothing in the amendment shall be construed to authorize the furnishing of care in any Veterans Administration facility to any individual not eligible for such care under other provisions of this title.

(16) Authorize installation of telephones in personal residences of nonmedical directors of VA hospitals, domiciliaries, centers and independent clinics. Present law permits this only in the case of directors who are medical doctors.

(17) Clarify the term "Veterans' Administration facilities" as it relates to provision of care in private facilities for VA beneficiaries.

The sectional analysis contained in the Veterans' Administration submission of May 3, 1971, embodied in this report, provides in greater detail an explanation of twelve of the items set forth above. Items (12) and (13) are apparently unobjectionable. The remaining items under (4), (6) and (7) do not carry the endorsement of the VA. With respect to item (4), the Committee believes that the extension of the benefit of hospitalization and medical services to the wife or child of a totally and permanently disabled veteran and to widows and children of veterans whose death was service-connected is reasonable and justified. In recent years the Congress has extended educational and loan guaranty benefits to certain children, wives and widows of veterans and in the last Congress we recognized the need for GI loan assistance in the case of wives of servicemen missing in action or held as prisoners of war by North Vietnam. Of course, since the very beginning of our veterans' programs an obligation to widows and orphans has been recognized by extending to them the monetary benefits of compensation and pension. Providing hospitalization and medical care for these new classes who are so vitally affected adversely by the total disability or service-connected death of their husbands or fathers is a reasonable extension of the mentioned benefits to which they are now entitled. Furthermore, the Committee is fully cognizant of the *present availability* of extensive medical care benefits to the spouses and children of (1) members serving on active duty; (2) retired members; and (3) members who die while serving on active duty or while in retirement. These benefits may be provided at little or no cost in Uniformed Services facilities (subject to availability of space and facilities) or under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) which involves a very modest contributory system. The Committee's bill would merely authorize VA medical care to a very select and worthy group of dependents of seriously disabled or deceased veterans. These dependents unfortunately do not come within the purview of the above-mentioned programs now fully financed or subsidized by the Government.

Concerning item (7) above, cases have come to the attention of the Committee demonstrating that in certain situations it is desirable to authorize the direct transfer from the military of discharged servicemen to nursing home care under the aegis of the Veterans Administration.

Finally, item (6) merely sets forth in statutory language certain appropriate limitations on outside activities of medical personnel which the Committee understands are now generally contained in administrative regulations.

It may be contended that certain provisions of this legislation; namely, sections 203 and 204, are in conflict with Executive Order 11615, the wage-price freeze of August 15, 1971. It is not the intent of the Committee to enact legislation that violates the letter or spirit of this Executive Order. The Administration, however, has recently strongly recommended the enactment of night, holiday and overtime differential pay for nurses, and the Committee recognizes the merits of this recommendation. In order to assure the avoidance of any direct conflict, the Committee is recommending the inclusion of a provision (independent of title 38 of the United States Code) to the effect that "to the extent deemed applicable by the President or his designee, sections 203 and 204 of this Act shall be subject to the provisions of the Economic Stabilization Act of 1970 (84 Stat. 799) as implemented by Executive Order 11615, dated August 15, 1971."

Cost

The following sets forth the sections of the bill which the Veterans' Administration is able to estimate would involve additional costs to the Government for each of the first five years:

	Fiscal year—				
	1972	1973	1974	1975	1976
Sec. 101(b).....	\$16,900,000	\$16,100,000	\$17,400,000	\$18,600,000	\$19,900,000
Sec. 102:					
Veterans.....	6,700,000	7,300,000	7,900,000	8,700,000	9,500,000
Wives, widows and children.....	6,000,000	7,500,000	9,000,000	10,500,000	12,000,000
Sec. 202.....	75,000	80,000	85,000	90,000	95,000
Sec. 203.....	80,000	85,000	90,000	95,000	100,000
Sec. 204.....	16,000,000	17,400,000	19,200,000	21,000,000	22,700,000
Sec. 401.....	3,000	3,150	3,300	3,500	3,800
Total.....	45,758,000	48,468,150	53,678,300	58,988,500	64,298,000

The committee has examined the cost estimate provided by the Veterans' Administration and finds no basis to question its authenticity and therefore adopts it as its own.

The report of the Veterans Administration on H.R. 37, as introduced, and its letter submitting a draft substitute bill (identical with the substitute recommended in the report on H.R. 37) follow:

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., May 3, 1971.

Hon OLIN E. TEAGUE,
Chairman, Committee on Veterans' Affairs, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This will respond to your request for a report by the Veterans' Administration on H.R. 37, 92d Congress, a bill to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery; and for other purposes, and on the following identical or similar purpose 92d Congress bills: H.R. 3261, H.R. 1686, H.R. 2560, and H.R. 4251.

The provisions of H.R. 37 and other identical 92d Congress bills are identical to those contained in H.R. 18252, 91st Congress, upon which we submitted a report to your committee dated October 7, 1970, and a supplemental report dated December 3, 1970. Copies of those reports are enclosed for your information. The comments contained in those reports are equally applicable to the corresponding provisions of the subject bills.

In that report we favored sections 101(a) (reflecting in definition of "Veterans' Administration facility" the inclusion of certain contract private facilities), 201 (education and training of health service personnel), 202 (appointment of two additional assistant Chief Medical Directors), 209 (malpractice liability protection clarification), 212(a)(2) (participating in programs under the Public Health Service Act), and section 213 (telephones for nonmedical hospital directors).

We requested that the committee defer action on sections 204(f) (differential pay for nurses), 211(a)(2) (contract authority for provision of services by medical school personnel), and 212(a)(1) (relating to the authority of the Administrator to lease property for certain purposes).

We were unable to recommend favorable consideration of sections 101(b) (VA hospitalization for certain wives, widows, and children), 101(c) (extension of outpatient care for certain veterans, and for certain wives, widows, and children), 102 (extension of community nursing home care), 103 (patient-staff ratio), that portion of 201 requiring a line item in the budget for education and training of health service personnel, 203 (a), (b), (c), and (e) (relating to nurses and licensed vocational nurses), 204 (that portion relating to increased pay for physicians performing administrative duties, and higher pay for certain physicians, dentists, and nurses), 205 (prohibition against certain outside activities by certain VA medical personnel), 206 (retirement credits for physicians and dentists), 207 (new allied

health positions, and personnel interview, travel, and rate adjustments), 208 (prohibits transfer of VA patient to collect insurance, veto by medical school deans of VA appointments, and transfer of VA equipment), 211(a)(1) (leave to attend one medical meeting each year) and that portion of 211(a)(2) providing for leave for certain physicians, dentists, and nurses for study and others to work toward a master's degree in hospital administration.

Our position on similar provisions contained in H.R. 37, and the other identical and similar purpose bills, is the same as stated in our reports on the 91st Congress bill. While we cannot recommend favorable consideration of the subject bills as such, we do recommend that H.R. 37 be amended as indicated in the enclosed draft amendment in the form of a substitute, containing those provisions of H.R. 37 which we favor, some with modifications, including the three sections which we advised the committee would be the subject of studies, modified in accordance with the results of those studies. Also enclosed is a section-by-section analysis of the amendment, the estimated cost, and a document showing the changes made in current law by the proposed amendment.

You also requested a report from the Veterans' Administration on the following 92d Congress bills which are identical to, or of similar purpose, to certain provisions of the subject bills or to provisions of our proposed amendment: H.R. 458, H.R. 3341, and H.R. 6038 (medical and hospital care for widows, wives, and children of certain veterans), H.R. 459 (training of health service personnel), H.R. 474 (hospital and medical care for widows and children of certain veterans), H.R. 475 and H.R. 477 (retirement credit for certain VA physicians and dentists), H.R. 813 (differential pay for nurses), H.R. 862 (authorize lease at VA facility), H.R. 2157 (differential pay for nurses), and H.R. 4250 (establish standards of conduct of the Department of Medicine and Surgery personnel). The views and comments contained in this report on similar purpose provisions of the subject bill are applicable to these bills.

Therefore, in view of the foregoing, while we cannot recommend favorable consideration by your committee of any of the subject bills, we would favor the enactment of H.R. 37, if amended, in accordance with our suggestion.

There is also enclosed a chart showing the estimated cost of each section of H.R. 37. We estimate that our proposed amendment would result in a first year cost of \$16.1 million.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

DONALD E. JOHNSON, *Administrator.*

Enclosures.

Chart I—Section-by-section Estimate of Costs of H.R. 37, 92d Congress

		Total fiscal year 1972 estimated costs of bill (in thousands)
Section:		
101		
	(a) Redefinition of VA facilities.....	None
	(b) VA hospitalization for certain wives, widows, and children.....	\$16, 879
	(c) Extension of outpatient care.....	
	(1) For veterans.....	101, 800
	(2) For wives, widows, and children.....	8, 700
102	Extension of community nursing home care.....	7, 800
103	Patient-staff ratio.....	(¹)
201	Line item in VA budget for training health service personnel for Nation.....	None
202	Two new nondoctor assistant chief medical directors.....	75
203	Appointment of licensed vocational nurses; increase pay for certain VACO service directors.....	10. 5
204		
	(a) Increase pay of physicians performing administrative duties.....	\$5,936.
	(b) Higher rates of pay for physicians, dentists, and nurses.....	
	(1) Physicians and dentists.....	\$12, 870.
	(2) Nurses.....	\$300.
	(c) Differential pay for nursing personnel LPN's and nursing assistants.....	\$26, 792.
	(1) Nurses.....	(\$18,583).
	(2) Nursing assistants and licensed practical nurses.....	(\$8,208).
205	Prohibition against outside activities by VA physicians, dentists, and nurses.....	None.
² 206	Retirement credits for physicians and dentists.....	No cost to VA.
207		
	(a) New allied health manpower positions.....	Impossible to estimate.
	(b) Preemployment interview.....	\$250.
	(c) Travel expenses to first duty station.....	\$750.
	(d) Nursing assistant adjustments.....	\$18,319.
208	Prohibits transfer of VA patient to affiliated hospital in order to obtain payment from insurance; prohibits veto by medical school deans of VA employment of personnel; transfer of VA equipment.....	None.
209	Extension of Federal Tort Claims Act to cover malpractice protection.....	None.
210	Comptroller General annual audit and report on contracts for scarce medical specialists service.....	None.
211		
	(a) Professional meetings.....	\$150.
	(b) Contract for medical, clinical, or teaching services.....	None.
	(c) Leave for physician, dentist, or nurse to study.....	None.
	(d) Leave for master's degree in hospital administration.....	None.
212		
	(a) Exempts leasing of buildings or land from advertising; permits lessee to repair and keep up premises leased.....	None
	(b) VA participation—Title IX of Public Health Service Act.....	None
	(c) Annual report by Comptroller General on sharing agreements.....	None
213	Telephones for nonphysician directors.....	3
Total of costed items.....		200, 634

¹ It is impossible to estimate with any accuracy the cost of section 103 of the bill. If it were to be assumed that additional personnel were to be employed by the Department of Medicine and Surgery in fiscal year 1972 to increase our present staff level to that contemplated by this section of the bill, the cost would be approximately \$287 million. However, the bill does not require that this staffing level be reached until 1975. Therefore, the actual cost of this section in any fiscal year would depend upon the speed with which the staff was increased to meet the statutory deadline; the patient load during the fiscal year; and the changes in staffing patterns which would be made independently of this requirement in order to keep pace with the changes in medical specialties and patient care procedures.

² The Civil Service Commission estimates the cost to the Civil Service Retirement Fund would be \$206,920.

AMENDMENT

H.R. 37, 92nd Congress, is amended by striking out all after the enacting clause and inserting in lieu thereof the following: That this Act may be cited as the "Veterans Medical Care Act of 1971".

TITLE I—ADMENTS TO CHAPTER 17 OF TITLE 38, UNITED STATES CODE—HOSPITAL, DOMICILIARY, AND MEDICAL CARE

SEC. 101. Subparagraph (C) of section 601(4) of title 38, United States Code, is amended to read as follows:

"(C) private facilities for which the Administrator contracts in order to provide (i) hospital care or medical services for persons suffering from service-connected disabilities or from disabilities for which such persons were discharged or released from the active military, naval, or air service; (ii) hospital care for women veterans of any war; or (iii) hospital care for veterans of any war in a State, Territory, Commonwealth, or possession of the United States not contiguous to the forty-eight contiguous States, except that the annually determined average hospital patient load per thousand veteran population hospitalized at Veterans' Administration expense in Government and private facilities in each such noncontiguous State may not exceed the average patient load per thousand veteran population hospitalized by the Veterans' Administration within the forty-eight contiguous States; but authority under this clause (iii) shall expire on December 31, 1978."

SEC. 102. Subsection (f) of section 612 of title 38, United States Code, is amended to read as follows:

"(f) The Administrator may also furnish medical services for a non-service-connected disability under the following circumstances:

"(1) Where such care is reasonably necessary in preparation for hospital admission, or where such care is reasonably necessary for a veteran who is determined to need hospital care if not treated.

"(2) Where a veteran has been granted hospital care, and outpatient care is reasonably necessary to complete treatment incident to such hospital care.

"(3) Where a veteran of any war has a total disability permanent in nature from a service-connected disability."

TITLE II—AMENDMENTS TO CHAPTER 73 OF TITLE 38, UNITED STATES CODE—DEPARTMENT OF MEDICINE AND SURGERY

SEC. 201. Subsection (b) of section 4101 of title 38, United States Code, is amended to read as follows:

"(b) In order to carry out more effectively the primary function of the Department of Medicine and Surgery to provide a complete medical and hospital service for the medical care and treatment of veterans and to assist in providing an adequate supply of health service personnel to the Nation, the Administrator shall, to the extent feasible without interfering with the medical care and treatment of veterans, develop and carry out a program of training and education of such health service personnel, acting in cooperation with schools of medicine, dentistry, osteopathy, and nursing; other institutions of higher learning; medical centers; hospitals; and such other public or nonprofit agencies, institutions, or organizations as the Administrator deems appropriate."

SEC. 202. Section 4103(a) of title 38, United States Code, is amended—

(a) by amending paragraph (4) to read as follows:

"(4) Not to exceed eight Assistant Chief Medical Directors, who shall be appointed by the Administrator upon the recommendations of the Chief Medical Director. At least two Assistant Chief Medical Directors may be individuals qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicine. One assistant Chief Medical Director shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Chief Medical Director for the operation of the Dental Service."; and

(b) by amending paragraph (7) to read as follows:

"(7) A Director of Pharmacy Service and a Director of Dietetic Service, appointed by the Administrator."

SEC. 203. Subsections (a) and (b) of section 4107 of title 38, United States Code, are amended to read as follows:

"(a) The per annum full-pay scale or ranges for positions provided in section 4103 of this title, other than Chief Medical Director and Deputy Chief Medical Director, shall be as follows:

"Section 4103 Schedule

- "Associate Deputy Chief Medical Director, \$36,000.
- "Assistant Chief Medical Director, \$37,624.
- "Medical Director, \$32,546 minimum to \$36,886 maximum.
- "Director of Nursing Service, \$32,546 minimum to \$36,886 maximum.
- "Director of Chaplain Service, \$28,129 minimum to \$35,633 maximum.
- "Director of Pharmacy Service, \$28,129 minimum to \$35,633 maximum.
- "Director of Dietetic Service, \$28,129 minimum to \$35,633 maximum.

"(b)(1) The grades and per annum full-pay ranges for positions provided in paragraph (1) of section 4104 of this title shall be as follows:

"Physician and Dentist Schedule

- "Director grade, \$28,129 minimum to \$35,633 maximum.
- "Executive grade, \$26,143 minimum to \$32,982 maximum.
- "Chief grade, \$24,251 minimum to \$31,523 maximum.
- "Senior grade, \$20,815 minimum to \$27,061 maximum.
- "Intermediate grade, \$17,761 minimum to \$23,089 maximum.
- "Full grade, \$15,040 minimum to \$19,549 maximum.
- "Associate grade, \$12,615 minimum to \$16,404 maximum.

"Nurse Schedule

- "Director grade, \$24,251 minimum to \$31,523 maximum.
- "Assistant Director grade, \$20,815 minimum to \$27,061 maximum.
- "Chief grade, \$17,761 minimum to \$23,089 maximum.
- "Senior grade, \$15,040 minimum to \$19,549 maximum.
- "Intermediate grade, \$12,615 minimum to \$16,404 maximum.
- "Full grade, \$10,470 minimum to \$13,611 maximum.
- "Associate grade, \$9,026 minimum to \$11,733 maximum.
- "Junior grade, \$7,727 minimum to \$10,049 maximum.

"(2) No person may hold the director grade in the 'Physician and Dentist Schedule' unless he is serving as a director of a hospital, domiciliary, center, or clinic (independent). No person may hold the executive grade unless he holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position."

SEC. 204. Section 2107 of title 38, United States Code, is further amended by adding at the end thereof the following new subsection:

"(d)(1) In addition to the basic compensation provided for nurses in subsection (b)(1) of this section, a nurse shall receive additional compensation as provided by paragraphs (2), (3), (4), and (5) of this subsection.

"(2) A nurse performing service on a tour of duty, any part of which is within the period commencing at 6:00 p.m. and ending at 6:00 a.m., shall receive additional compensation for each hour of service on such tour not exceeding eight hours, at a rate equal to 10 percent of the employee's basic hourly rate, provided that four hours or more of that tour fall between 6:00 p.m. and 6:00 a.m. When fewer than four hours fall between 6:00 p.m. and 6:00 a.m., the nurse shall be paid the differential for each hour of work performed between those hours.

"(3) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, and which part is not overtime work, shall receive additional compensation for each hour of service on such tour not exceeding eight hours, at a rate equal to 25 percent of the employee's basic hourly rate.

"(4) A nurse performing service on a holiday designated by Federal statute or Executive order, shall receive such employee's regular rate of basic pay, plus additional pay at a rate equal to such regular rate of basic pay, for that holiday work which is not overtime work.

"(5) A nurse performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service; the overtime rate shall be one and one-half times the employee's basic hourly rate, not to exceed one and one-half times the basic hourly rate for the minimum rate of Intermediate grade of the Nurse Schedule. For the purposes of this paragraph, overtime must be of at least 15 minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such

nurse is required to return to her place of employment, shall be deemed to be a minimum of two hours in duration.

"(6) For the purpose of computing the additional compensation provided by paragraph (2), (3), (4), or (5) of this subsection, a nurse's basic hourly rate shall be derived by dividing the annual rate of basic compensation by 2080.

"(7) Any additional compensation paid pursuant to this subsection shall not be considered as basic compensation for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, or 87 of title 5, or other benefits based on basic compensation."

Sec. 205. Section 4114(a) of title 38, United States Code, is amended by striking out the words "ninety days" in the last sentence of paragraph (3) (A) and inserting in lieu thereof "one year".

Sec. 206. Section 4116 of title 38, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a) The remedy—

"(1) against the United States provided by sections 1346(b) and 2672 of title 28, or

"(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under sections 1346(b) or 2672 of title 28, for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of his duties in or for the Department of Medicine and Surgery shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his estate) whose act or omission gave rise to such claim.";

(2) by striking out the last sentence in subsection (c) and inserting in lieu thereof the following: "After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of his office or employment, the case shall be remanded to the State court."; and

(3) by adding at the end thereof the following new subsection:

"(e) The Administrator may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to which the immunity provisions of this section apply (as described in subsection (a)), for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment (including the conduct of clinical studies or investigations) in the exercise of his duties in or for the Department of Medicine and Surgery, if such person is assigned to a foreign country, detailed to a State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States provided by sections 1346(b) and 2672 of title 28, for such damage or injury."

Sec. 207. Section 4117 of title 38, United States Code, is amended to read as follows:

"The Administrator may enter into contracts to provide scarce medical specialist services at Veterans' Administration facilities with medical schools, clinics, and any other group or individual capable of furnishing such services (including, but not limited to, services of physicians, dentists, nurses, technicians, and other medical support personnel)."

TITLE III—AMENDMENTS TO CHAPTER 81 OF TITLE 38, UNITED STATES CODE—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

Sec. 301. Chapter 81 of title 38, United States Code, is amended by inserting at the end of the first sentence in subsection (a) of section 5012 thereof the following: "Any lease made pursuant to this subsection to any public or nonprofit organization may be made without regard to the provisions of section 5 of title 41. Notwithstanding section 303b of title 40 or other provisions of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease."

SEC. 302.(a). Chapter 81 of title 38, United States Code, is amended by—

(1) striking out in the first sentence of subsection (a) of section 5053 immediately after the parenthesis the words "or medical schools" and inserting immediately after the close parenthesis the words "or medical schools or clinics"; and

(2) inserting immediately after section 5053 the following new section:

"§ 5053A. Use of excess hospital beds

"In addition to the authority granted under section 5053 of this title, the Administrator may, when he determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, between Veterans' Administration hospitals and other hospitals (or other medical installations having hospital facilities) or medical schools or clinics in the medical community, for the use of hospital beds, with supporting services, when not needed for the care and treatment of veterans."

(b) The table of headings at the beginning of chapter 81 of title 38 is amended by inserting immediately after

"5053. Specialized medical resources."

the following:

"5053A. Use of excess hospital beds."

SEC. 303. (a) Chapter 81 of title 38, United States Code, is amended by striking out section 5056 thereof and inserting in lieu thereof the following:

"§ 5056. Coordinating with and participating in programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965

"The Administrator, to the extent feasible without interfering with the medical care and treatment of veterans, is authorized to participate in programs under title IX of the Public Health Service Act, and the Administrator and the Secretary of Health, Education, and Welfare shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under such title IX of the Public Health Service Act."

(b) The analysis of such chapter 81 is amended by striking out

"5056. Coordination with programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965."

and inserting in lieu thereof the following:

"5056. Coordinating with and participating in programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965."

TITLE IV—AMENDMENT TO CHAPTER 3 OF TITLE 38, UNITED STATES CODE—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

SEC. 401. (a) Section 234 of title 38, United States Code, is amended by inserting immediately after the words "telephones for" the words "non-medical directors of centers, hospitals, independent clinics, domiciliaries, and".

(b) The table of sections at the beginning of chapter 3 of title 38, United States Code, is amended by deleting

"234. Telephone service for medical officers."

and inserting in lieu thereof:

"234. Telephone service for medical officers and facility directors."

SECTION-BY-SECTION ANALYSIS AND ESTIMATE OF COST OF AMENDMENT

"VETERANS MEDICAL CARE ACT OF 1971"

TITLE I—AMENDMENTS TO CHAPTER 17 OF TITLE 38, UNITED STATES CODE—HOSPITAL, DOMICILIARY, AND MEDICAL CARE

Section 101

This section would amend subparagraph (C) of section 601(4), title 38, to reflect in the definition of "Veterans' Administration facilities" the long-standing statutory construction of the term to include private facilities for which the Administrator contracts to provide outpatient care for service-connected disabilities. The amendment will not create a new benefit nor expand the outpatient care program nor would there be any additional cost.

Section 102

This section would amend subsection (f) of section 612 of title 38, to authorize the Administrator to furnish medical services for a non-service-connected disability where (1) such care is reasonably necessary in preparation for hospital admission or obviate the need for hospital admission; (2) a veteran has been granted hospital care, and outpatient care is reasonably necessary to complete treatment; or (3) any veteran of any war who has a total disability permanent in nature from a service-connected disability.

Section 612(f) (1) as added by Public Law 86-639, authorizes outpatient treatment for a non-service-connected disability where such care is reasonably necessary in preparation for admission of a veteran who has been determined to need hospital care and who has been scheduled for admission.

The objectives of that legislation were reduction in the length of patient stay in the hospital, decrease in the cost per patient treated, and a partial check on the development of longer waiting lists as the veteran population ages. While, generally, such benefits have been realized during the period the law has been in force, certain restrictive provisions in the current law serve as an impediment to fuller achievement of these worthwhile goals. Medical services furnished must be limited to those necessary to prepare the patient for hospital care for which he has actually been scheduled.

There is a sizable number of applicants whose need for hospitalization cannot definitely be determined after routine examination. This group frequently requires extensive workup and recalls for consultation to confirm or rule out requirement for hospitalization. Realistically, such procedures often go beyond the need to determine hospital care and constitute treatment.

The provisions in revised section 612(f) (1) will result in a more timely treatment of veterans on an outpatient basis whom the VA admitting physician has certified would otherwise require admission to a VA hospital. It is estimated that enactment of this provision would entail no additional cost to the VA hospital system, but it may generate modest savings.

TITLE II—AMENDMENTS TO CHAPTER 73 OF TITLE 38, UNITED STATES CODE—
DEPARTMENT OF MEDICINE AND SURGERY

Section 201

This section would amend section 4101 of title 38 by amending subsection (b) thereof to make it clear that the Administrator can furnish training and education to health service personnel beyond the direct needs of the Department of Medicine and Surgery and thus assist in providing an adequate supply of such personnel to meet the needs of the Nation to the extent that this is feasible without interfering with the medical care and treatment of veterans.

Section 4101 of title 38 now specifically identifies education and training as a functional responsibility of the Department of Medicine and Surgery. The programs authorized, however, are limited to those which bear reasonable relationship to the basic mission of the Department; namely, the medical care and treatment of veterans. This authority, together with the provisions of section 5053 of title 38, has done much to support the education and training programs of the Veterans Administration and to permit greater participation with the medical community in a more effective utilization of specialized medical resources. Nevertheless, the limitation imposed on our education and training program does, in some measure, impede our ability to realize our full potential for carrying out programs to increase the availability of qualified health service personnel to meet the needs of the Nation.

The Veterans Administration is affiliated with a number of educational institutions, including 79 medical schools, 55 dental schools, 254 nursing schools, 73 social work schools, and 74 graduate departments of psychology. It is manifest that the extensive nature of the Veterans Administration's medical program, together with this broad basis of affiliation with educational institutions, presents an unusual opportunity to contribute to a program of training and education of health service personnel and thereby make a substantial contribution in alleviating the national shortage in these categories of employees.

The provisions of present law limiting the Veterans Administration education and training functions to those which bear reasonable relationship to the medical care and treatment of veterans render it impossible to make the maximum contribution to the Nation's objective to increase the medical manpower.

There would be no necessary additional cost as the result of the enactment of this amendment. The actual cost would be dependent upon the training possibilities which develop and the support given the activity by the Congress through appropriations.

Section 202

This section amends subsection 4103(a)(4) of title 38 to provide for the appointment by the Administrator, upon recommendation by the Chief Medical Director, of two additional Assistant Chief Medical Directors who are qualified in the Administration of health services and who may not be doctors of medicine, dental surgery, or dental medicine.

Under the provisions of Public Law 293, 79th Congress, enacted January 3, 1946, there were authorized not to exceed eight Assistant Chief Medical Directors as the Department of Medicine and Surgery. This number was reduced to five by Public Law 87-793 but increased to six in 1966 by Public Law 89-785. Hence, the net effect of the proposed amendment would be to restore the number of Assistant Chief Medical Directors to eight as previously provided although, for the first time, providing that two of them may not necessarily be physicians or dentists.

The expansion in the type of complex medical programs has concomitantly fostered an increased awareness of the necessity for sophisticated management techniques in implementing these programs. An organization as large and dispersed as the Department of Medicine and Surgery of the Veterans Administration, with an annual budget of almost \$2 billion, requires a wide range of specialized disciplines. To this end, the Chief Medical Director should have the option available to him to appoint individuals basically trained in management disciplines, with or without qualifications as doctors of medicine or dentistry. These individuals would supplement the professional skills of the medical Assistant Chief Medical Directors and would provide the Chief Medical Director with the full range of expertise needed to efficiently administer the agency's far-flung medical activities.

The gross cost resulting from enactment of this section would be approximately as follows:

1972-----	\$75, 000
1973-----	80, 000
1974-----	85, 000
1975-----	90, 000
1976-----	95, 000

Total First Five-Year Cost-----	425, 000
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These costs would be to some extent offset by savings in salary of classified personnel now performing related duties.

This section also amends section 4103(a)(7) in order to conform the titles "Chief Pharmacist" and "Chief Dietitian" to reflect new designations of Director of the Pharmacy Service and Director of the Dietetic Service to correspond to the other Director of Services titles, such as Chaplain and Nursing.

Section 203

This section would amend subsections (a) and (b) of section 4107 of title 38, in order to reflect the adjustment in rates of pay effected by Executive Order 11576, dated January 8, 1971, pursuant to authority vested by subchapter I of chapter 53 of title 5, as amended by the Federal Pay Comparability Act of 1970, and section 3(c) of that Act.

The per annum full-pay scale or ranges for positions in this amended schedule in excess of \$36,000 are limited by section 5308 of title 5, as added by the Federal Pay Comparability Act of 1970, to the rate for level V of the Executive Schedule (as of the date of the Executive Order \$36,000).

Moreover, this section would amend the "section 4103 schedule" contained in section 4107(a) by providing that the salary range for the Director of Nursing Service would be changed from the equivalent of GS-15 to the equivalent of GS-17 and for the Director of Chaplain Service, the Director of Pharmacy Service, and the Director of Dietetic Service from the equivalent of GS-15 to the equivalent of GS-16. The VA in conjunction with the Civil Service Commission recently completed a study of these positions with a view to determine in particular the appropriateness of linkage in pay between the position of Director of

Nursing Service and grade GS-15 under the General Schedule. It was the conclusion in this study that the position of Director of Nursing Service was clearly superior to GS-15 in level. The proposed adjustment in pay for the positions indicated is essential for alignment purposes and recognition of their individual responsibilities. The titles of Chief Pharmacist and Chief Dietitian are changed to that of Director of Pharmacy Service and Director of Dietetic Service, respectively, in order to parallel the existing titles for Director of Nursing Service and Director of Chaplain Service.

It is estimated that enactment of this portion of section 203 would result in an additional annual cost to the Government of approximately \$10,500.

The joint study by the Veterans Administration and the Civil Service Commission also revealed that certain other nurse positions of those presently in the Assistant Director Grade, which equates in pay to grade GS-14 under the General Schedule, were superior to that grade relationship. Accordingly, the purpose of the new Director grade inserted in the "Nurse Schedule" by this amendment is necessary to recognize those positions. The pay range provided is equivalent to that of GS-15 under the General Schedule.

It is estimated that enactment of this part of section 203 would cost an additional \$42,000 annually.

Subsection (b)(2) of section 4107 is amended to confine the prohibition against any person in the director grade serving in any other position than director of a hospital, domiciliary, center, or outpatient clinic (independent) to the "Physician and Dentist Schedule", in order to accomplish the purpose of the amendment creating a director grade in the "Nurse Schedule".

Section 204

This section would provide that a nurse performing (1) service on a tour of duty, of which four hours or more fall within the period commencing at 6:00 p.m. and ending at 6:00 a.m., would receive additional compensation for each hour on such tour, not exceeding eight hours, at a rate equivalent to 10 percent of the employee's basic hourly rate, and when fewer than four hours fall between 6:00 p.m. and 6 a.m., the nurse would receive an additional 10 percent for each hour of work performed between those hours; (2) nonovertime work on a tour of duty, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, would receive additional compensation for each hour of service on such tour, not to exceed eight hours, at a rate equivalent to 25 percent of the employee's basic hourly rate; (3) service on a holiday designated by Federal statute or Executive order, would receive such employee's regular rate of basic pay, plus additional pay at a rate equal to such regular rate of basic pay for that holiday work which is not overtime work; and (4) officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight hours in a day, would be paid for each hour of such additional service at a rate of one and one-half times the employee's basic hourly rate; compensatory time off would not be permitted and such overtime work would have to be of at least 15 minutes duration in a day to be creditable for overtime pay; however, excess service performed on a day when service was not scheduled, or for which such nurse is required to return to her place of employment, would be deemed to be a minimum of two hours in duration, regardless of whether or not work is performed for the full two hours.

This section also provides the formula for converting the per annum basic compensation rate into the hourly rate. Such hourly rate would be derived by dividing the annual rate of compensation by 2080, which represents the average number of working hours per year, and is the same formula used in computing the hourly overtime and night rate of pay for Civil Service employees under title 5 United States Code, where the basic rate of pay of the employee is fixed on an annual basis. Moreover, it provides that "the additional compensation" provided by this section would not be considered basic compensation for purposes of lump sum leave payments, severance pay, compensation for work injury, retirement, life insurance, or other benefits relating to basic compensation.

Under current law Veterans Administration nurses do not receive premium pay for those conditions of work which are generally regarded as more onerous to employees both within and without the Federal Government. A study of hospital practices shows that non-Federal hospitals almost universally provide extra pay for nurses working on evening and night tours of duty. Also, by law, Federal employees under the General Schedule, Postal Field Service, and prevailing rate systems of pay are entitled to premium pay for such considerations as Sunday and overtime duty.

The Veterans Administration has found it very difficult to attract and retain qualified nurses for the evening and night tours of duty in many Veterans Administration hospitals. An impairment of our ability to provide adequate nursing care for our ill and disabled veteran patients could result unless immediate action is taken to strengthen our position in this matter.

Developments in recent years with respect to the matter of nurses' pay in private, community and state hospitals throughout the country make it necessary for the Veterans Administration which operates the largest single system of medical facilities in the world, to provide a rounded compensation plan for nurses, including customary provisions for premium pay, in order to remain competitive in attracting and retaining highly qualified nursing personnel.

It is estimated that the annual cost based on present level of salaries, should this amendment be enacted, would be approximately \$16 million.

Section 205

This Section would amend section 4114(a) (3) (A) of title 38 to extend from 90 days to one year the present time limit on temporary full-time appointment by the Administrator upon recommendation of the Chief Medical Director, of persons in the Department of Medicine and Surgery, other than physicians, dentists, and nurses. If amended, this authority would parallel the present one-year time limit on part-time appointments of these personnel, other than trainees who currently have no time limit for part-time appointment.

The enactment of this proposal would not result in any significant increase in costs.

Section 206

This section would clarify and extend the type of malpractice liability protection now provided medical personnel of the VA Department of Medicine and Surgery by the provisions of section 4116 of title 38, United States Code.

Section 4116 provides, in effect, that a suit against the United States under the Federal Tort Claims Act is the exclusive remedy of an individual seeking to recover for injuries arising while undergoing medical care and treatment in a Veterans' Administration hospital. It was intended to immunize the Department of Medicine and Surgery medical personnel who are covered from personal liability arising out of their official VA duties. It has served its purpose well and has been an aid in the recruitment of much-needed medical personnel. Nevertheless, questions have arisen as to the scope of its coverage in certain situations where a suit against the Government cannot now be brought under the Federal Tort Claims Act (e.g., suits alleging assault and battery, libel and slander, false imprisonment, or relating to a work-incurred injury of a Federal employee).

While several recent decisions by the U.S. Court of Appeals for the Sixth and Ninth Circuits (i.e., *Van Houten v. Ralls*, 411 F. 2d 940 and *Vantrease v. United States*, 400 F. 2d 853) have added assurance that the type of protection provided by the so-called Drivers Liability Act (upon which the provisions of 38 U.S.C. 4116 were patterned) was intended to immunize the employees covered thereby from personal liability in all situations where they are sued as a result of their official duties (including when they are sued by a fellow employee for a work-related reason), it is believed desirable to spell out authority in the law itself to insure such immunity.

In addition to providing clarifying language as to the intent of the law, the amendment here proposed would provide Department of Medicine and Surgery medical personnel with a type of protection similar to that contained in the National Health Service Corps Act of 1970 (P.L. 91-623), applicable to Public Health Service Personnel. It would authorize the Administrator, to the extent he deems appropriate, to hold harmless or provide liability insurance for any person to which the immunity provisions of 38 USC 4116 are applicable, where such person might be held liable for damage to property, or personal injury or death, negligently caused while furnishing medical care and treatment (including the conduct of clinical studies or investigations) in the exercise of his duties in or for the Department of Medicine and Surgery, under circumstances where the injured party could not bring an action against the United States as provided by Sections 1346(b) or 2672 of title 28. For example, it would provide a means of protecting Department of Medicine and Surgery medical personnel who are assigned to a foreign country, or who are sued for assault and battery, false imprisonment, or libel and slander in connection with the performance of their assigned duties.

By filling a void which exists in areas where a suit against the Government under the Federal Tort Claims Act may now be precluded, this amendment would

provide a means of insuring the immunity from personal liability arising out of the performance of official duties, which Congress intended to provide when the provisions of 38 USC 4116 were enacted.

While this proposal may result in a slight increase in the Government's exposure to malpractice claims arising out of the activities of our medical personnel, any cost increase which may be involved would be more than offset by the improvement of morale which would result therefrom, and the added inducement in attempting to recruit shortage category health personnel.

Section 207

This section would amend section 4117 of title 38, to authorize the Administrator to enter into contracts to provide scarce medical specialist services at Veterans Administration facilities with medical schools, clinics, and any other group or individual capable of furnishing such services. This contracting authority would include, but not be limited to, services of physicians, dentists, nurses, technicians, and other medical support personnel.

This proposed amendment is intended merely to clarify current law which authorizes such contracting authority with medical schools and clinics. This contracting authority, insofar as clinics are concerned, has been interpreted by the Comptroller General of the United States (B-169747, June 24, 1970) to mean "any medical organization which is capable of contracting for and furnishing the services in question." Moreover, the Comptroller General was of the opinion that the term "medical specialist" may be construed "as including any professional or technician who performs specialist services related to providing medical care and attention."

Enactment of this section would clarify current statutory language whereby the Administrator could contract for scarce medical specialist services with medical schools, clinics, and any other group or individual capable of furnishing such services and wherein an employer-employee relationship is established.

Enactment of this section would not result in any additional cost to the Government.

TITLE III—AMENDMENTS TO CHAPTER 81 OF TITLE 38, UNITED STATES CODE— ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

Section 301

This section would amend section 5012(a) of title 38, which permits the Administrator to lease lands or buildings under his control for terms not exceeding three years, to exempt such leases from (1) the provisions of section 5 of title 41 requiring advertising where the lease exceeds \$500; and (2) from the provisions of section 303b of title 40 which bars lease provisions calling for alteration, repair, or improvement of such leased property as part of the consideration for the rental to be paid. Under the change, the lessee would be permitted to maintain, protect, or restore property where such property is leased to public or nonprofit organizations.

The Veterans Administration only out-leases property when it is temporarily excess to its needs. We do not lease for strictly commercial purposes, but only for civic, health, educational or local government use. Thus, advertising in these cases serves no useful purpose but does involve time and expense that is considered unnecessary.

When the Veterans Administration does out-lease property it is most usually to satisfy a particular civic or local community need and is generally to a public or nonprofit organization. In many instances there are benefits, either directly or indirectly, accruing to the Government. Also, there is to be considered the community relations benefits that are derived. In negotiating the rental value we set a rate that will serve to recapture the value of all services provided by the Government. However, in some instances we could be relieved of certain expenses for materials and personnel if we could require the lessee to provide for maintenance and protection of the property leased.

It is estimated that the enactment of this section would not involve any additional cost to the Government, but could result in some savings.

Section 302

Subsection (a)(1) of this section would amend section 5053(a) of title 38, by deleting immediately after the parenthesis the words "or medical schools" and inserting immediately after the close parenthesis the words "or medical schools or clinics". Current law (38 U.S.C. 5053) requires that the medical school have

hospital facilities before any sharing agreement can be made between the medical school and the Veterans Administration.

The amendment proposed here would cure this defect and authorize the Administrator to enter into a contract or agreement with a medical school, whether or not it has a hospital, and with clinics, for the mutual use, or exchange of use of specialized medical resources.

Subsection (a) (2) would amend chapter 81 of title 38, United States Code, by adding a new section 5053A authorizing the Veterans Administration hospitals to furnish, under contract, hospital beds, with supporting services, to other hospitals or other installations having hospital facilities or medical schools or clinics in the medical community, when not needed for the care and treatment of veterans. The authority which would thus be granted would be an extension of our present sharing authority (38 U.S.C. 5053).

In our letter to the Congress on April 23, 1965, requesting enactment of our current sharing authority, we stated:

While current law permits the use of our facilities by nonveterans in emergencies for humanitarian reasons, we are unable to permit the use of such facilities and equipment, as well as expertise of our staff, for nonemergent situations even if there are no other similar facilities available. This situation exists even though these scarce medical facilities are not always utilized to the maximum and could be available to the community, without detriment to the care and treatment of veteran beneficiaries, during periods when our immediate needs do not require maximum utilization.

Although the language of the present authority would appear to be sufficiently broad to encompass the sharing of beds surplus to our needs, as contemplated by the subject bill, this question was resolved by the legislative history of the enactment of the sharing authority. In Senate Report No. 1727, to accompany H.R. 11631, 89th Congress (p. 12), the committee stated:

Some apprehension has been expressed that the language of this legislation might be construed to authorize the use of Veterans Administration medical care beds by nonveteran patients of private or other Federal facilities on the basis of a shortage of such beds in the medical community. Specifically, there was some concern that the language in section 5052(c) which reads "For the purpose of this section the term 'specialized medical resources' means medical resources (whether equipment, space, or personnel) which because of cost, limited availability, or unusual nature, are either unique in the medical community or are subject to effective utilization only through mutual use," would authorize such a construction. Such a broad interpretation was in no way intended by the Veterans Administration in recommending this legislation, nor by this committee in reporting it, and, therefore, would not be permissible. Since the major purpose of this legislation is to strengthen and improve VA hospitals, the committee emphasizes that no provision shall be construed to authorize any reduction in medical services available to veterans.

In view of that language, we have held that we do not have authority to contract with hospitals, medical schools or other medical installations having hospital facilities for the use of our hospital beds, even though such beds are not needed for the care and treatment of veterans.

In a hospital system as large as the Veterans Administration hospital system, some excess beds will exist which are either staffed or which could readily be staffed. Our experience has shown that in a number of such instances these facilities could have been utilized for the benefit of the community without any interference with our primary mission of meeting the medical care and treatment needs of our veteran beneficiaries. Two examples of such a situation, which occurred during the past year, may be mentioned.

First, a medical school with hospital facilities with which one of our hospitals was affiliated needed some additional bed capacity. There were unused beds available in the Veterans Administration hospital, but they were not staffed. Those beds could have been activated with the assistance of the staff of the medical school and would thus not only have assisted the community but, at the same time, enhanced Veterans Administration health care by attracting high caliber personnel interested in the extended training opportunities which would have existed. The second case involved an affiliated medical school which did not have a hospital and depended on community hospitals for the clinical treatment of medical school patients, and we had beds excessive to our use and, moreover, could have provided certain specialized medical resources had it been permissible to furnish hospital beds for the use of medical school patients. In such a case it would be beneficial to our hospital care program, to the medical school, and to the community if we were in a position to execute an agreement with the medical school as would be authorized by this section.

The type of contract proposed would be subject to the same requirement for reimbursement of full costs to which other types of sharing contracts are now subject. Under those circumstances, increased costs would not be involved and enactment of this section could result in some savings being realized.

Section 303

This section would amend section 5056 of title 38, United States Code, to clearly delineate the authority of the Administrator to participate in programs under title IX of the Public Health Service Act, and directs the Administrator, to the maximum extent practicable, to coordinate with the Secretary of Health, Education, and Welfare, programs carried out under subchapter IV of chapter 81 of title 38, and programs carried out under title IX of the Public Health Service Act. Thus, within certain limitations, a Veterans Administration facility would be eligible to receive funds (through local contracts, agreements, or otherwise) from any institution which is a grantee under section 901(a) of title IX of the Public Health Service Act, and to receive project grants under section 910 of that Act.

The Acting Secretary for Health, Education and Welfare, stated in an opinion dated May 20, 1970, that the Veterans Administration is not precluded from receiving funds (through local contracts, agreements, or otherwise, from any institution which is a grantee under Section 901(a) of title IX of the Public Health Service Act provided that the Federal facility on its part is authorized to undertake the activity and so to utilize the funds provided. He further stated that by virtue of Section 501 of the Public Health Service Act "research, training, demonstration" project grants may be made direct to Veterans Administration hospitals under title IX of the Act, but only to the extent that the services provided by the Veterans Administration facility, as an affiliate of a regional medical program, constitute a "research, training, demonstration project" to be conducted by the facility as part of a regional medical program. The proposed amendment to Section 5056 of title 38 would make it clear that the Administrator is authorized to participate in programs under title IX of the Public Health Service Act and thus utilize grant funds thereunder.

There would be no identifiable additional cost resulting from the enactment of this provision.

TITLE IV—AMENDMENT TO CHAPTER 3 OF TITLE 38, UNITED STATES CODE—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

Section 401

This section amends section 234 of title 38 to permit the installation of official telephone service in the private residences, apartments, or quarters of non-medical Veterans Administration hospital, independent clinic, domiciliary, and center directors.

Present law permits such official telephones only for directors who are physicians. This direct service has proven very valuable in (a) local within hospital emergencies, including such instances as berserk patients and employees, shootings, an employee held as a hostage, and the sudden death of a key employee while on duty after hours; (b) local community emergencies such as Hurricane Camille, tornadoes, and train collisions with multiple victims; and (c) national and area civil defense programs where the support, participation, and coordination by each Veterans Administration hospital director is required on a planned basis. This has permitted direct communication with these key officials without having to compete with the normal family telephone. More well-trained non-medical administrators are becoming available to us as hospital, center, clinic and domiciliary directors and we believe that these non-medical directors have as great a need for rapid telephone service in the case of these within-facility, local, or civil defense emergencies as the other directors.

It is estimated that such a proposal would cost approximately \$3,000 annually.

CHANGES IN EXISTING LAW MADE BY THE AMENDMENT

Changes in existing law made by the amendment are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter to be printed in *italic* is underlined, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

CHAPTER 3—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

SUBCHAPTER I—VETERANS' ADMINISTRATION

Sec.

201. Veterans' Administration an independent agency.
 202. Seal of the Veterans' Administration.

SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

210. Appointment and general authority of Administrator; Deputy Administrator.
 211. Decisions by Administrator; opinions of Attorney General.
 212. Delegation of authority and assignment of duties.
 213. Contracts and personal services.
 214. Reports to the Congress.
 215. Publication of laws relating to veterans.
 216. Research by Administrator; indemnification of contractors.
 217. Studies of rehabilitation of disabled persons.

SUBCHAPTER III—VETERAN'S ADMINISTRATION REGIONAL OFFICES; EMPLOYEES

230. Central and regional offices.
 231. Placement of employees in military installations.
 233. Employees' apparel; school transportation; recreational equipment; visual exhibits; personal property; emergency transportation of employees.
 234. Telephone service for medical officers [.] and facility directors.
 235. Benefits to employees at oversea offices who are United States citizens.
 236. Administrative settlement of tort claims arising in foreign countries.

SUBCHAPTER IV—VETERANS OUTREACH SERVICES PROGRAM

240. Purpose; definitions.
 241. Outreach services.
 242. Veterans assistance offices.
 243. Utilization of other agencies.
 244. Report to Congress.

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SUBCHAPTER III—VETERANS' ADMINISTRATION REGIONAL OFFICES; EMPLOYEES

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§ 234. Telephone service for medical officers and facility directors

The Administrator may pay for official telephone service and rental in the field whenever incurred in case of official telephones for *nonmedical directors of centers, hospitals, independent clinics, domiciliaries, and* medical officers of the Veterans' Administration where such telephones are installed in private residences or private apartments or quarters, when authorized under regulations established by the Administrator.

* * * * *

CHAPTER 17—HOSPITAL, DOMICILIARY, AND MEDICAL CARE

* * * * *

SUBCHAPTER I—GENERAL

§ 601. Definitions

For the purpose of this chapter—

- (1) The term "disability" means a disease, injury, or other physical or mental defect.
 (2) The term "veteran of any war" includes any veteran of the Indian Wars, or any veteran awarded the Medal of Honor.¹
 (3) The term "period of war" includes each of the Indian Wars.
 (4) The term "Veterans' Administration facilities" means—
 (A) facilities over which the Administrator has direct and exclusive jurisdiction;
 (B) Government facilities for which the Administrator contracts; and
 (C) private facilities for which the Administrator contracts in order to provide (i) hospital care [(i) in emergency cases] or medical services for persons suffering from service-connected disabilities or from disabilities for

which such persons were discharged or released from the active military, naval, or air service; (ii) *hospital care* for women veterans of any war; or (iii) *hospital care* for veterans of any war in a State, Territory, Commonwealth, or possession of the United States not contiguous to the forty-eight contiguous States, except that the annually determined average hospital patient load per thousand veteran population hospitalized at Veterans' Administration expense in Government and private facilities in each such noncontiguous State may not exceed the average patient load per thousand veteran population hospitalized by the Veterans' Administration within the forty-eight contiguous States; but authority under this clause (iii) shall expire on December 31, 1978.

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SUBCHAPTER II—HOSPITAL OR DOMICILIARY CARE AND MEDICAL TREATMENT

* * * * *

§ 612. Eligibility for medical treatment

(a) Except as provided in subsection (b), the Administrator, within the limits of Veterans' Administration facilities, may furnish such medical services as he finds to be reasonably necessary to any veteran for a service-connected disability. In the case of any veteran discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, such services may be so furnished for that disability, whether or not service-connected for the purposes of this chapter.

(b) Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—

(1) which is service-connected and compensable in degree;

(2) which is service-connected, but not compensable in degree, but only (A) if it is shown to have been in existence at time of discharge or release from active military, naval, or air service and (B) if application for treatment is made within one year after such discharge or release, except that if a disqualifying discharge or release has been corrected by competent authority, application may be made within one year after the date of correction or the date of enactment of this exception, whichever is later;

(3) which is a service-connected dental condition or disability due to combat wounds or other service trauma, or of a former prisoner of war;

(4) which is associated with and is aggravating a disability resulting from some other disease or injury which was incurred in or aggravated by active military, naval, or air service; or

(5) from which a veteran of the Spanish-American War or Indian Wars is suffering.

(c) Dental services and related appliances for a dental condition or disability described in clause (2) of subsection (b) of this section shall be furnished on a one-time completion basis, unless the services rendered on a one-time completion basis are found unacceptable within the limitations of good professional standards, in which event such additional services may be afforded as are required to complete professionally acceptable treatment.

(d) Dental appliances, wheelchairs, artificial limbs, trusses, special clothing, and similar appliances to be furnished by the Administrator under this section may be procured by him either by purchase or by manufacture, whichever he determines may be advantageous and reasonably necessary.

(e) Any disability of a veteran of the Spanish-American War or Indian wars, upon application for the benefits of this section or outpatient medical services under section 624 of this title, shall be considered for the purposes thereof to be a service-connected disability incurred or aggravated in a period of war.

(f) The Administrator may also furnish medical services for a non-service-connected disability under the following circumstances:

(1) Where such care is reasonably necessary in preparation for *hospital admission* [of a veteran who has been determined to need hospital care and who has been scheduled], or where such care is reasonably necessary for a veteran who is determined to need hospital care if not treated.

(2) Where a veteran has been granted hospital care, and outpatient care is reasonably necessary to complete treatment incident to such hospital care.

(3) Where a veteran of any war has a total disability permanent in nature from a service-connected disability.

(g) Where any veteran is in receipt of increased pension or additional compensation or allowance based on the need of regular aid and attendance or by reason of being permanently housebound, or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance, the Administrator may furnish the veteran such medical services as he finds to be reasonably necessary.

(h) The Administrator shall furnish to each veteran who is receiving additional compensation or allowance under chapter 11, or increased pension as a veteran of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, by reason of being permanently housebound or in need of regular aid and attendance, such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran. The Administrator shall continue to furnish such drugs and medicines so ordered to any such veteran in need of regular aid and attendance whose pension payments have been discontinued solely because his annual income is greater than the applicable maximum annual income limitation, but only so long as his annual income does not exceed such maximum annual income limitation by more than \$500.

* * * * *

CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

Sec.

- 4101. Functions of Department.
- 4102. Divisions of Department.
- 4103. Office of the Chief Medical Director.
- 4104. Additional appointments.
- 4105. Qualifications of appointees.
- 4106. Period of appointment; promotions.
- 4107. Grades and pay scales.
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- 4109. Retirement rights.
- 4110. Disciplinary boards.
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- 4113. Travel expenses of employees.
- 4114. Temporary full-time, part-time, and without compensation appointments; residences and internships.
- 4115. Regulations.
- 4116. Defense of certain malpractice and negligence suits.
- 4117. Contracts for scarce medical specialist services.

§ 4101. Functions of Department

(a) There shall be in the Veterans' Administration a Department of Medicine and Surgery under a Chief Medical Director. The functions of the Department of Medicine and Surgery shall be those necessary for a complete medical and hospital service, including medical research, as prescribed by the Administrator pursuant to this chapter and other statutory authority, for the medical care and treatment of veterans.

[(b) In order to more effectively carry out the functions imposed on the Department of Medicine and Surgery by subsection (a) of this section, the Administrator shall carry out a program of training and education of health service personnel, acting in cooperation with schools of medicine, dentistry, osteopathy, and nursing; other institutions of higher learning; medical centers; hospitals; and such other public or nonprofit agencies, institutions, or organizations as the Administrator deems appropriate.]

(b) In order to carry out more effectively the primary function of the Department of Medicine and Surgery to provide a complete medical and hospital service for the medical care and treatment of veterans and to assist in providing an adequate supply of health service personnel to the Nation, the Administrator shall, to the extent feasible without interfering with the medical care and treatment of veterans, develop and carry out a program of training and education of such health service personnel, acting in cooperation with schools of medicine, dentistry, osteopathy, and nursing; other institutions of higher learning; medical centers; hospitals; and such other public or nonprofit agencies, institutions, or organizations as the Administrator deems appropriate.

§ 4102. Divisions of Department

The Department of Medicine and Surgery shall include the following: Office of the Chief Medical Director, a Medical Service, a Dental Service, a Nursing Service, and such other professional and auxiliary services as the Administrator may find to be necessary to carry out the functions of the Department.

§ 4103. Office of the Chief Medical Director

(a) The Office of the Chief Medical Director shall consist of the following—

(1) The Chief Medical Director, who shall be the Chief of the Department of Medicine and Surgery and shall be directly responsible to the Administrator for the operations of the Department. He shall be a qualified doctor of medicine, appointed by the Administrator.

(2) The Deputy Chief Medical Director, who shall be the principal assistant of the Chief Medical Director. He shall be a qualified doctor of medicine appointed by the Administrator.

(3) The Associate Deputy Chief Medical Director, who shall be an assistant to the Chief Medical Director and the Deputy Chief Medical Director. He shall be a qualified doctor of medicine, appointed by the Administrator.

(4) Not to exceed **[six]** *eight* Assistant Chief Medical Directors, who shall be appointed by the Administrator upon the recommendation of the Chief Medical Director. *At least two Assistant Chief Medical Directors may be individuals qualified in the administration of health services and who are not doctors of medicine, dental surgery, or dental medicine.* One Assistant Chief Medical Director shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Chief Medical Director for the operation of the Dental Service.

(5) Such Medical Directors as may be appointed by the Administrator, upon the recommendation of the Chief Medical Director, to suit the needs of the Department. A Medical Director shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine.

(6) A Director of Nursing Service, who shall be a qualified registered nurse, appointed by the Administrator, and who shall be responsible to the Chief Medical Director for the operation of the Nursing Service.

(7) A **[Chief Pharmacist]** *Director of Pharmacy Service* and a **[Chief Dietitian]** *Director of Dietetic Service*, appointed by the Administrator.

(8) Such other personnel and employees as may be authorized by this chapter.

(b) Except as provided in subsection (c) of this section—

(1) any appointment under this section shall be for a period of four years, with reappointment permissible for successive like periods,

(2) any such appointment or reappointment may be extended by the Administrator for a period not in excess of three years, and

(3) any person so appointed or reappointed shall be subject to removal by the Administrator for cause.

* * * * *

§ 4107. Grades and pay scales

(a) The per annum full-pay scale or ranges for positions provided in section 4103 of this title, other than Chief Medical Director and Deputy Chief Medical Director, shall be as follows:

SECTION 4103 SCHEDULE

Associate Deputy Chief Medical Director, \$36,000.

[Assistant Chief Medical Director, \$33,495.]

[Medical Director, \$28,976 minimum to \$32,840 maximum.]

[Director of Nursing Service, \$21,589 minimum to \$28,069 maximum.]

[Director of Chaplain Service, \$21,589 minimum to \$28,069 maximum.]

[Chief Pharmacist, \$21,589 minimum to \$28,069 maximum.]

[Chief Dietitian, \$21,589 minimum to \$28,069 maximum.]

Assistant Chief Medical Director, \$37,624.

Medical Director, \$32,546 minimum to \$36,886 maximum.

Director of Nursing Service, \$32,546 minimum to \$36,886 maximum.

Director of Chaplain Service, \$28,129 minimum to \$35,633 maximum.

Director of Pharmacy Service, \$28,129 minimum to \$35,633 maximum.

Director of Dietetic Service, \$28,129 minimum to \$35,633 maximum.

(b)(1) The grades and per annum full-pay ranges for positions provided in paragraph (1) of section 4104 of this title shall be as follows:

PHYSICIAN AND DENTIST SCHEDULE

Director grade, \$25,044 minimum to \$31,724 maximum.
Executive grade, \$23,273 minimum to \$30,257 maximum.
Chief grade, \$21,589 minimum to \$28,069 maximum.
Senior grade, \$18,531 minimum to \$24,093 maximum.
Intermediate grade, \$15,812 minimum to \$20,555 maximum.
Full grade, \$13,389 minimum to \$17,403 maximum.
Associate grade, \$11,233 minimum to \$14,599 maximum.

*Director grade, \$28,129 minimum to \$35,633 maximum.
Executive grade, \$26,143 minimum to \$33,982 maximum.
Chief grade, \$24,251 minimum to \$31,523 maximum.
Senior grade, \$20,815 minimum to \$27,061 maximum.
Intermediate grade, \$17,761 minimum to \$23,089 maximum.
Full grade, \$15,040 minimum to \$19,549 maximum.
Associate grade, \$12,615 minimum to \$16,404 maximum.*

NURSE SCHEDULE

Assistant Director grade, \$18,531 minimum to \$24,093 maximum.
Chief grade, \$15,812 minimum to \$20,555 maximum.
Senior grade, \$13,389 minimum to \$17,403 maximum.
Intermediate grade, \$11,233 minimum to \$14,599 maximum.
Full grade, \$9,320 minimum to \$12,119 maximum.
Associate grade, \$8,073 minimum to \$10,449 maximum.
Junior grade, \$6,882 minimum to \$8,943 maximum.

*Director grade, \$24,251 minimum to \$31,523 maximum.
Assistant Director grade, \$20,815 minimum to \$27,061 maximum.
Chief grade, \$17,761 minimum to \$23,089 maximum.
Senior grade, \$15,040 minimum to \$19,549 maximum.
Intermediate grade, \$12,615 minimum to \$16,404 maximum.
Full grade, \$10,470 minimum to \$13,611 maximum.
Associate grade, \$9,026 minimum to \$11,735 maximum.
Junior grade, \$7,727 minimum to \$10,049 maximum.*

(2) No person may hold the director grade in the "Physician and Dentist Schedule" unless he is serving as a director of a hospital, domiciliary, center, or outpatient clinic (independent.) No person may hold the executive grade unless he holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position.

(c) Notwithstanding any other provision of law, the per annum salary rate for each individual serving as a director of a hospital, domiciliary, or center who is not a physician shall not be less than the salary rate which he would receive under this section if his service as a director of a hospital, domiciliary, or center had been service as a physician in the director grade. The position of the director of a hospital, domiciliary, or center shall not be subject to chapter 51 and subchapter III of chapter 53 of title 5.

(d)(1) In addition to the basic compensation provided for nurses in subsection (b)(1) of this section, a nurse shall receive additional compensation as provided by paragraphs (2), (3), (4), and (5) of this subsection.

(2) A nurse performing service on a tour of duty, any part of which is within the period commencing at 6:00 p.m. and ending at 6:00 a.m., shall receive additional compensation for each hour of service on such tour not exceeding eight hours, at a rate equal to 10 percent of the employee's basic hourly rate, provided that four hours or more of that tour fall between 6:00 p.m. and 6:00 a.m. When fewer than four hours fall between 6:00 p.m. and 6:00 a.m., the nurse shall be paid the differential for each hour of work performed between those hours.

(3) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, and which part is not overtime work, shall receive additional compensation for each hour of service on such tour not exceeding eight hours, at a rate equal to 25 percent of the employee's basic hourly rate.

(4) A nurse performing service on a holiday designated by Federal statute or Executive order, shall receive such employee's regular rate of basic pay, plus additional pay at a rate equal to such regular rate of basic pay, for that holiday work which is not overtime work.

(5) A nurse performing officially ordered or approved hours of service in excess of 40 hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service; the overtime rate shall be one and one-half times the employee's basic hourly rate, not to exceed one and one-half times the basic hourly rate for the minimum rate of Intermediate grade of the Nurse Schedule. For the purposes of this paragraph, overtime must be of at least 15 minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such nurse is required to return to her place of employment, shall be deemed to be a minimum of two hours in duration.

(6) For the purpose of computing the additional compensation provided by paragraphs (2), (3), (4), or (5) of this subsection, a nurse's basic hourly rate shall be derived by dividing the annual rate of basic compensation by 2080.

(7) Any additional compensation paid pursuant to this subsection shall not be considered as basic compensation for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, or 87 of title 5, or other benefits based on basic compensation.

* * * * *

§ 4114. Temporary, full-time, part-time, and without compensation appointments; residencies and internships

(a)(1) The Administrator, upon the recommendation of the Chief Medical Director, may employ, without regard to civil service or classification laws, rules, or regulations—

(A) physicians, dentists, nurses, dietitians, social workers, librarians, and other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs) on a temporary full-time, part-time, or without compensation basis; and

(B) physicians, dentists, nurses, and other professional and technical personnel on a fee basis.

(2) Personnel employed under paragraph (1) of this subsection shall be in addition to personnel described in section 4103, paragraph (1) of section 4104, and section 4111 of this title and shall be paid such rates of pay as the Administrator may prescribe.

(3)(A) Temporary full-time appointments of physicians, dentists, and nurses may exceed ninety days only if the Chief Medical Director finds that circumstances render it impracticable to obtain the necessary services through appointments under paragraph (1) of section 4104 of this title. Temporary full-time appointments of other personnel shall not exceed [ninety days] one year.

(B) No part-time appointment shall be for a period of more than one year, except for appointments of physicians, dentists, nurses and interns, and residents and other trainees in medical support programs.

(b) The Administrator shall have authority to establish residencies and internships; to appoint qualified persons to such positions without regard to civil-service or classification laws, rules, or regulations; and to prescribe the conditions of such employment, including necessary training, and the customary amount and terms of pay during the period of such employment and training.

(c) When the Chief Medical Director determines that it is not possible to recruit qualified citizens for the necessary services, appointments under this section may be made without regard to the citizenship requirements of section 4105 of this title or of any other law prohibiting the employment of, or payment of compensation to, a person who is not a citizen of the United States.

(d) The Chief Medical Director may waive for the purpose of appointments under this section the requirements of section 4105(a) of this title that the licensure of a physician or dentist, or the registration of a nurse must be in a "State," if—

(1) in the case of a physician, he is to be used on a research or an academic post or where there is no direct responsibility for the care of patients; or

(2) in any case, where the individual is to serve in a country other than the United States and his licensure or registration is in the country in which he is to serve.

§ 4115. Regulations

The Chief Medical Director with the approval of the Administrator, unless specifically otherwise provided, shall promulgate all regulations necessary to the administration of the Department of Medicine and Surgery and consistent with existing law, including regulations relating to travel, transportation of household goods and effects, and deductions from pay for quarters and subsistence; and to the custody, use, and preservation of the records, papers, and property of the Department of Medicine and Surgery.

§ 4116. Defense of certain malpractice and negligence suits

[(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28]

(a) *The remedy—*

(1) *against the United States provided by sections 1346(b) and 2672 of title 28, or*
 (2) *through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under sections 1346(b) or 2672 of title 28, for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of his duties in or for the Department of Medicine and Surgery shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his estate) whose act or omission gave rise to such claim.*

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person, against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Administrator to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Administrator.

(c) Upon a certification by the Attorney General that the defendant was acting in the scope of his employment in or for the Department of Medicine and Surgery at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. *After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States.* Should a United States district court determine on a hearing on a motion to remand held before a trial on the [merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States] *merits that the employee whose act or omission gave rise to the suit was not acting within the scope of his office or employment, the case shall be remanded to the State court.*

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) *The Administrator may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to which the immunity provisions of this section apply (as described in subsection (a)), for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment (including the conduct of clinical studies or investigations) in the exercise of his duties in or for the Department of Medicine and Surgery, if such person is assigned to a foreign country, detailed to a State or political division thereof, or is acting under any other circumstances which would preclude the remedies*

of an injured third person against the United States provided by sections 1346(b) and 2672 of title 28, for such damage or injury.

§ 4117 Contracts for scarce medical specialist services

[The Administrator may enter into contracts with medical schools and clinics to provide scarce medical specialist services at Veterans' Administration facilities (including, but not limited to, services of radiologists, pathologists, and psychiatrists).]

The Administrator may enter into contracts to provide scarce medical specialist services at Veterans' Administration facilities with medical schools, clinics, and any other group or individual capable of furnishing such services (including, but not limited to, services of physicians, dentists, nurses, technicians, and other medical support personnel).

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY

SUBCHAPTER I—PROVISIONS RELATING TO HOSPITALS AND HOMES

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- 5001. Hospital and domiciliary facilities.
- 5002. Construction and repair of buildings.
- 5003. Use of Armed Forces facilities.
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- 5013. Procurement of prosthetic appliances.
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- 5032. Declaration of purpose.
- 5033. Authorization of appropriations.
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- 5035. Applications with respect to projects: Payments.
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SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

- 5051. *Statement of congressional purpose.*
- 5052. *Definitions.*
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- 5053A. *Use of excess hospital beds.*
- 5054. *Exchange of medical information.*
- 5055. *Pilot programs; grants to medical schools.*
- [5056. *Coordination with programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965.*]
- 5056. *Coordinating with and participating in programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965.*
- 5057. *Reports to Congress.*

SUBCHAPTER I—PROVISIONS RELATING TO HOSPITALS AND HOMES

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§ 5007. Relinquishment of legislative jurisdiction

The Administrator, on behalf of the United States, may relinquish to the State in which any lands or interests therein under his supervision or control are situated, such measure of legislative jurisdiction over such lands or interests as he deems necessary or desirable. Such relinquishment of legislative jurisdiction shall be initiated by filing a notice thereof with the Governor of the State concerned, or in such other manner as may be prescribed by the laws of such State, and shall take effect upon acceptance by such State.

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SUBCHAPTER II—PROCUREMENT AND SUPPLY

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§ 5012. Authority to procure and dispose of property and to negotiate for common services

(a) The Administrator may lease for a term not exceeding three years lands or buildings, or parts or parcels thereof, belonging to the United States and under his control. *Any lease made pursuant to this subsection to any public or nonprofit organization may be made without regard to the provisions of section 5 of title 41. Notwithstanding section 303b of title 40 or other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease.* The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarter, shall be covered into the Treasury of the United States as miscellaneous receipts.

(b) The Administrator may, for the purpose of extending benefits to veterans and dependents, and to the extent he deems necessary, procure the necessary space for administrative, clinical, medical, and outpatient treatment purposes by lease, purchase, or construction of buildings, or by condemnation or declaration of taking, pursuant to law.

(c) The Administrator may procure laundry services, and other common services as specifically approved by him from nonprofit, tax-exempt educational, medical or community institutions, without regard to the requirements of section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)), whenever such services are not reasonably available from private commercial sources. Notwithstanding this exclusion, the provisions of section 304 of that Act shall apply to procurement authorized by this subsection.

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SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

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§ 5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when he determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in paragraphs (1) and (2) below, between Veterans' Administration hospitals and other hospitals [or medical schools] or other medical installations having hospital facilities) *or medical schools or clinics in the medical community:*

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

The Administrator may determine the geographical limitations of a medical community as used in this section.

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment. Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical appropriation.

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Veterans' Administration facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Veterans' Administration facility shall apply to veterans treated hereunder.

§ 5053A. Use of excess hospital beds

In addition to the authority granted under section 5053 of this title, the Administrator may, when he determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement between Veterans' Administration hospitals and other hospitals (or other medical installations having hospital facilities) or medical schools or clinics in the medical community, for the use of hospital beds, with supporting services, when not needed for the care and treatment of veterans.

* * * * *

§ 5056. Coordination with *and participating* in programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965

The Administrator, to the extent feasible without interfering with the medical care and treatment of veterans, is authorized to participate in programs under title IX of the Public Health Service Act, and the Administrator and the Secretary of Health, Education, and Welfare shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under title IX of the Public Health Service Act.

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VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., May 3, 1971.

Hon. CARL ALBERT,
Speaker of the House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: There is transmitted herewith a draft bill "To amend title 38 of the United States Code to provide improved medical care to veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery; and for other purposes," with the request that it be introduced in order that it may be considered for enactment.

In view of the large number of sections and the wide area of medical care and medical personnel administration covered by the draft bill, we are enclosing a detailed analysis and cost estimate of each section of the proposed bill, together with an enclosure showing the changes proposed to be made in current law. Briefly, however, the draft bill would:

(1) extend the long-standing statutory definition of the term "Veterans' Administration facility" to include private facilities under contract to provide outpatient care for service-connected disabilities;

(2) provide statutory basis for furnishing prehospital, post-hospital, and outpatient care which might expedite or avoid hospital care;

(3) clarify the Administrator's authority to furnish training and education to health service personnel beyond the direct needs of the Department of Medicine and Surgery;

(4) make adjustments in salary and positions of certain Department of Medicine and Surgery personnel and provide differential pay for nurses;

(5) clarify contracting authority for scarce medical specialists;

(6) clarify and extend malpractice liability protection for medical personnel; and

(7) expand medical sharing agreement authority and permit a VA facility to participate in certain programs under the Public Health Service Act.

If enacted, the total first-year cost to the Government of the draft bill would be approximately \$16.1 million.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this draft bill to the Congress from the standpoint of the administration's program.

Sincerely,

DONALD E. JOHNSON, *Administrator.*

Enclosure.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART I. GENERAL PROVISIONS

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CHAPTER 3—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

* * * * *

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230. Central and regional offices.
 231. Placement of employees in military installations.
 233. Employees' apparel; school transportation; recreational equipment; visual exhibits; personal property; emergency transportation of employees.
 234. Telephone service for medical officers *and facility directors*.
 235. Benefits to employees at oversea offices who are United States citizens.
 236. Administrative settlement of tort claims arising in foreign countries.

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Subchapter III—Veterans' Administration Regional Offices; Employees

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§ 234. Telephone service for medical officers *and facility directors*

The Administrator may pay for official telephone service and rental in the field whenever incurred in case of official telephones for *non-medical directors of centers, hospitals, independent clinics, domiciliaries, and medical officers of the Veterans' Administration* where such telephones are installed in private residences or private apartments or quarters, when authorized under regulations established by the Administrator.

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PART II. GENERAL BENEFITS

Chapter	Sec.
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CHAPTER 17—HOSPITAL, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL

Sec.

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* * * * *

Subchapter I—General

§ 601. Definitions

For the purposes of this chapter—

- (1) The term “disability” means a disease, injury, or other physical or mental defect.
- (2) The term “veteran of any war” includes any veteran of the Indian Wars, or any veteran awarded the Medal of Honor.
- (3) The term “period of war” includes each of the Indian Wars.
- (4) The term “Veterans’ Administration facilities” means—

(A) facilities over which the Administrator has direct and exclusive jurisdiction;

(B) Government facilities for which the Administrator contracts; and

(C) private facilities for which the Administrator contracts in order to provide [hospital care] (i) [in emergency cases] *hospital care or medical services* for persons suffering from service-connected disabilities or from disabilities for which such persons were discharged or released from the active military, naval, or air service; (ii) *hospital care* for women veterans of any war; or (iii) *hospital care* for veterans of any war in a State, [Territory] *territory*, Commonwealth, or possession of the United States not contiguous to the forty-eight contiguous States, except that the annually determined average hospital patient load per thousand veteran population hospitalized at Veterans’ Administration expense in

Government and private facilities in each such noncontiguous State may not exceed the average patient load per thousand veteran population hospitalized by the Veterans' Administration within the forty-eight contiguous States; but authority under this clause (iii) shall expire on December 31, 1978.

* * * * *

Subchapter II—Hospital or Domiciliary Care and Medical Treatment

§ 610. Eligibility for hospital and domiciliary care

(a) * * *

* * * * *

(d) *The Administrator, within the limits of Veterans' Administration facilities, may furnish hospital care to the following individuals to the extent that the provision of such care does not interfere with the furnishing of hospital and domiciliary care under subsections (a) and (b) of this section.*

(1) *the wife or child of a person who has a total disability, permanent in nature, resulting from a service-connected disability; and*

(2) *the widow or child of a person who has died as the result of a service-connected disability.*

* * * * *

§ 612. Eligibility for medical treatment

(a) * * *

* * * * *

[(f) The Administrator may also furnish medical services for a non-service-connected disability under the following circumstances:

[(1) Where such care is reasonably necessary in preparation for admission of a veteran who has been determined to need hospital care and who has been scheduled for admission.

[(2) Where a veteran has been granted hospital care, and outpatient care is reasonably necessary to complete treatment incident to such hospital care.]

(f) *The Administrator may also furnish medical services on an outpatient or ambulatory basis to any person eligible for hospital care under section 610 of this title under the following circumstances;*

(1) *Where such services are reasonably necessary in preparation for, or to obviate the need of, hospital admission.*

(2) *Where such a person has been granted hospital care and such medical services are reasonably necessary to complete treatment incident to such hospital care.*

(3) *Where a veteran of any war has a total disability permanent in nature resulting from a service-connected disability.*

* * * * *

§ 620. Transfers for nursing home care

(a) Subject to subsection (b) of this section, the Administrator may [transfer any veteran, who has been furnished care by the Administrator in a hospital under the direct and exclusive jurisdiction of the Administrator,] *transfer—*

(i) *any veteran who has been furnished care by the Administrator in a hospital under the direct and exclusive jurisdiction of the Administrator, and*

(vi) *any person who has been furnished care in any hospital of any of the Armed Forces and who upon discharge therefrom will become a veteran,*

to any public or private institution not under the jurisdiction of the Administrator which furnishes nursing home care, for care at the expense of the United States, if the Administrator determines that—

(1) such veteran has received maximum benefits from such care in such hospital, but will require a protracted period of nursing home care which can be furnished in such institution, and

(2) the cost of such nursing home care in such institution will not exceed 40 per centum of the cost of care furnished by the Veterans' Administration in a general hospital under the direct and exclusive jurisdiction of the Administrator, as such cost may be determined from time to time by the Administrator.

Nursing home care may not be furnished pursuant to this section at the expense of the United States for more than six months in the aggregate in connection with any one transfer, except (A) in the case of the veteran whose hospitalization was primarily for a service-connected disability, or (B) where in the judgment of the Administrator a longer period is warranted in the case of any other veteran. Any veteran who is furnished care by the Administrator in a hospital in Alaska or Hawaii may be furnished nursing home care under the provisions of this section even if such hospital is not under the direct and exclusive jurisdiction of the Administrator.

* * * * *

Subchapter III—Miscellaneous Provisions Relating to Hospital Care and Medical Treatment of Veterans

* * * * *

§ 626. Reimbursement for loss of personal effects by fire

The Administrator shall, under regulations which he shall prescribe, reimburse veterans in Veterans' Administration hospitals and domiciliaries for any loss of personal effects sustained by fire or natural disaster while such effects were stored in designated locations in Veterans' Administration hospitals or domiciliaries.

* * * * *

§ 628. Reimbursement of certain medical expenses

The Administrator may, under such limitations as he may prescribe, reimburse beneficiaries entitled to hospital care or medical services under laws administered by the Veterans' Administration the reasonable value of such care or services from sources other than the Veterans' Administration (including the necessary travel incidental thereto) where—

(1) *rendered in a medical emergency of such nature that delay would have been hazardous to life or health;*

(2) *Veterans' Administration or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not have been reasonable, sound, wise or practical, or treatment had been, or would have been refused; and*

(3) *rendered to a veteran in need thereof, for an adjudicated service-connected disability or non-service-connected disability associated*

with and held to be aggravating a service-connected disability (or to a veteran found in need of vocational rehabilitation under chapter 31 of this title, for whom an objective had been selected, or who is pursuing a course of vocational rehabilitation training, and who is medically determined to have been in need of care or treatment to make possible his entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training when interrupted because of illness, injury, or a dental condition).

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PART V—BOARDS AND DEPARTMENTS

* * * * *

CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

Sec.

- 4101. Functions of Department.
- 4102. Divisions of Department.
- 4103. Office of the Chief Medical Director.
- 4104. Additional appointments.
- 4105. Qualifications of appointees.
- 4106. Period of appointment; promotions.
- 4107. Grades and pay scales.
- 4108. [Administration] *Personnel administration.*

* * * * *

§ 4101. Functions of Department

(a) There shall be in the Veterans' Administration a Department of Medicine and Surgery under a Chief Medical Director. The functions of the Department of Medicine and Surgery shall be those necessary for a complete medical and hospital service, including medical research, as prescribed by the Administrator pursuant to this chapter and other statutory authority, for the medical care and treatment of veterans.

(b) In order to [more effectively carry out the functions imposed on the Department of Medicine and Surgery by subsection (a) of this section] *carry out more effectively the primary function of the Department of Medicine and Surgery to provide a complete medical and hospital service for the medical care and treatment of veterans and to assist in providing an adequate supply of health service personnel to the Nation, the Administrator shall, to the extent feasible without interfering with the medical care and treatment of veterans, develop and carry out a program of training and education of such health service personnel, acting in cooperation with schools of medicine, dentistry, osteopathy, and nursing; other institutions of higher learning; medical centers; hospitals; and such other public or nonprofit agencies, institutions, or organizations as the Administrator deems appropriate.*

* * * * *

§ 4103. Office of the Chief Medical Director

(a) The Office of the Chief Medical Director shall consist of the following—

- (1) The Chief Medical Director, who shall be the Chief of the Department of Medicine and Surgery and shall be directly re-

sponsible to the Administrator for the operations of the Department. He shall be a qualified doctor of medicine, appointed by the Administrator.

(2) The Deputy Chief Medical Director, who shall be the principal assistant of the Chief Medical Director. He shall be a qualified doctor of medicine, appointed by the Administrator.

(3) The Associate Deputy Chief Medical Director, who shall be an assistant to the Chief Medical Director and the Deputy Chief Medical Director. He shall be a qualified doctor of medicine, appointed by the Administrator.

(4) Not to exceed **[six]** *eight* Assistant Chief Medical Directors, who shall be appointed by the Administrator upon the **[recom-**
mendation] *recommendations* of the Chief Medical Director. *Two Assistant Chief Medical Directors shall be individuals qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicine.* One Assistant Chief Medical Director shall be a qualified doctor of dental surgery or dental medicine who shall be directly responsible to the Chief Medical Director for the operation of the Dental Service.

(5) Such Medical Directors as may be appointed by the Administrator, upon the recommendation of the Chief Medical Director, to suit the needs of the Department. A Medical Director shall be either a qualified doctor of medicine or a qualified doctor of dental surgery or dental medicine.

(6) A Director of Nursing Service, who shall be a qualified registered nurse, appointed by the Administrator, and who shall be responsible to the Chief Medical Director for the operation of the Nursing Service.

[(7) A Chief Pharmacist and a Chief Dietitian, appointed by the Administrator.]

(7) A Director of Pharmacy Service, a Director of Dietetic Service, and a Chief Optometrist, each appointed by the Administrator.

* * * * *

§ 4107. Grades and pay scales

(a) The per annum full-pay scale or ranges for positions provided in section 4103 of this title, other than Chief Medical Director and Deputy Chief Medical Director, shall be as follows:

SECTION 4103 SCHEDULE

Associate Deputy Chief Medical Director **[\$36,000.]**, *at the annual rate provided in section 5316 of title 5 for positions in level V of the Executive Schedule.*

Assistant Chief Medical Director, \$37,624.

Medical Director, \$32,546 minimum to \$36,886 maximum.

Director of Nursing Service, **[\$24,251]** \$32,546 minimum to **[\$31,523]** \$36,886 maximum.

Director of Chaplain Service, **[\$24,251]** \$28,129 minimum to **[\$31,523]** \$35,633 maximum.

[Chief Pharmacist, \$24,251] *Director of Pharmacy Service, \$28,129 minimum to [\$31,523] \$35,633 maximum.*

[Chief Dietician, \$24,251] *Director of Dietetic Service, \$28,129 minimum to [\$31,523] \$35,633 maximum.*

Chief Optometrist, \$26,547 minimum to \$33,627 maximum.

(b)(1) The grades and per annum full-pay ranges for positions provided in paragraph (1) of section 4104 of this title shall be as follows:

PHYSICIAN AND DENTIST SCHEDULE

Director grade, \$28,129 minimum to \$35,633 maximum.

Executive grade, \$26,143 minimum to \$33,982 maximum.

Chief grade, \$24,251 minimum to \$31,523 maximum.

Senior grade, \$20,815 minimum to \$27,061 maximum.

Intermediate grade, \$17,761 minimum to \$23,089 maximum.

Full grade, \$15,040 minimum to \$19,549 maximum.

Associate grade, \$12,615 minimum to \$16,404 maximum.

NURSE SCHEDULE

Director grade, \$24,251 minimum to \$31,523 maximum.

Assistant Director grade, \$20,815 minimum to \$27,061 maximum.

Chief grade, \$17,761 minimum to \$23,089 maximum.

Senior grade, \$15,040 minimum to \$19,549 maximum.

Intermediate grade, \$12,615 minimum to \$16,404 maximum.

Full grade, \$10,470 minimum to \$13,611 maximum.

Associate grade, \$9,026 minimum to \$11,735 maximum.

Junior grade, \$7,727 minimum to \$10,049 maximum.

(2) No person may hold the director grade *in the "Physician and Dentist Schedule"* unless he is serving as a director of a hospital, domiciliary, center, or outpatient clinic (independent). No person may hold the executive grade unless he holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position.

(c) Notwithstanding any other provision of law, the per annum salary rate of each individual serving as a director of a hospital, domiciliary, or center who is not a physician shall not be less than the salary rate which he would receive under this section if his service as a director of a hospital, domiciliary, or center had been service as a physician in the director grade. The position of the director of a hospital, domiciliary, or center shall not be subject to chapter 51 and subchapter III of chapter 53 of title 5.

(d) *The limitations in section 5308 of title 5 shall apply to pay under this section.*

(e)(1) *In addition to the basic compensation provided for nurses in subsection (b)(1) of this section, a nurse shall receive additional compensation as provided by paragraphs (2), (3), (4), and (5) of this subsection.*

(2) *A nurse performing service on a tour of duty, any part of which is within the period commencing at 6 postmeridian and ending at 6 antemeridian, shall receive additional compensation for each hour of service on such tour not exceeding eight hours, at a rate equal to 10 per centum of the employee's basic hourly rate, provided that four hours or more of that tour fall between 6 postmeridian and 6 antemeridian. When fewer than four hours fall between 6 postmeridian and 6 antemeridian, the nurse shall be paid the differential for each hour of work performed between those hours.*

(3) A nurse performing service on a tour of duty, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, and which part is not overtime work, shall receive additional compensation for each hour of service on such tour not exceeding eight hours, at a rate equal to 25 per centum of the employee's basic hourly rate.

(4) A nurse performing service on a holiday designated by Federal statute or Executive order, shall receive such employee's regular rate of basic pay, plus additional pay at a rate equal to such regular rate of basic pay, for that holiday work which is not overtime work.

(5) A nurse performing officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service; the overtime rate shall be one and one-half times the employee's basic hourly rate, not to exceed one and one-half times the basic hourly rate for the minimum rate of Intermediate grade of the Nurse Schedule. For the purposes of this paragraph, overtime must be of at least fifteen minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such nurse is required to return to her place of employment, shall be deemed to be a minimum of two hours in duration.

(6) For the purpose of computing the additional compensation provided by paragraph (2), (3), (4), or (5) of this subsection, a nurse's basic hourly rate shall be derived by dividing the annual rate of basic compensation by two thousand and eighty.

(7) Any additional compensation paid pursuant to this subsection shall not be considered as basic compensation for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, or 87 title 5, or other benefits based on basic compensation.

§ 4108. [Administration] Personnel administration

(a) Notwithstanding any law, Executive order, or regulation, the Administrator shall prescribe by regulation the hours and conditions of employment and leaves of absence of physicians, dentists, and nurses appointed to the Department of Medicine and Surgery, except that no physician, dentist, or nurse employed on a full-time basis may—

(1) assume responsibility for the medical care of any patient other than a patient admitted for treatment at a Veterans' Administration facility, except in those cases where the individual, upon request and with the approval of the Chief Medical Director, performs professional services to assist communities or medical practice groups, to meet medical needs which would not otherwise be available, for a period of service not to exceed one hundred and eighty calendar days, which may be extended by the Chief Medical Director for a second period not to exceed one hundred and eighty calendar days;

(2) teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with his duties within the Department;

(3) accept payment under any insurance or assistance program established under subchapter XVIII or XIX of title 42 for professional services rendered by him;

(4) accept from any source, with respect to any travel performed by him, any payment or per diem which would be in addition or supplementary to the allowances authorized under this chapter or title 5 for such travel;

(5) request or permit any individual or organization to pay, on his behalf, for insurance insuring him against malpractice claims or for his dues or similar fees for membership in medical or dental societies or related professional associations; and

(6) perform professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or his personal benefit, or both, and in the case of any such fund or account established before the effective date of this subsection—

(A) the affiliated institution shall report on a quarterly basis to the Administrator and to the Comptroller General of the United States with respect to such fund or account, and

(B) no physician, dentist or nurse may receive any cash from such fund or account on or after the effective date of this subsection.

(b) As used in this section, the term "affiliated institution" means any medical school or other institution with which the Administrator has a contract or agreement for the training or education of health service personnel.

§ 4109. Retirement rights

Persons appointed to the Department of Medicine and Surgery shall be subject to the provisions of and entitled to benefits under [the Civil Service Retirement Act] chapter 83 of title 5.

* * * * *

§ 4114. Temporary full-time, part-time, and without compensation appointments; residencies and internships

(a)(1) The Administrator, upon the recommendation of the Chief Medical Director, may employ, without regard to civil service or classification laws, rules, or regulations—

(A) physicians, dentists, nurses, dietitians, social workers, librarians, and other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs) on a temporary full-time, part-time, or without compensation basis; and

(B) physicians, dentists, nurses, and other professional and technical personnel on a fee basis.

(2) Personnel employed under paragraph (1) of this subsection shall be in addition to personnel described in section 4103, paragraph (1) of section 4104, and section 4111 of this title and shall be paid such rates of pay as the Administrator may prescribe.

(3)(A) Temporary full-time appointments of physicians, dentists, and nurses may exceed ninety days only if the Chief Medical Director finds that circumstances render it impracticable to obtain the necessary services through appointments under paragraph (1) of section 4104 of this title. Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing, approved by the Administrator, and are pending registration as a graduate nurse in a State, shall not exceed one year. Temporary

full-time appointments of other personnel shall not exceed [ninety days] *one year*.

(B) No part-time appointment shall be for a period of more than one year, except for appointments of physicians, dentists, nurses and interns, and residents and other trainees in medical support programs.

(b) The Administrator shall have authority to establish residencies and interships; to appoint qualified persons to such positions without regard to civil-service or classification laws, rules, or regulations; and to prescribe the conditions of such employment, including necessary training, and the customary amount and terms of pay during the period of such employment and training.

* * * * *

§ 4116. Defense of certain malpractice and negligence suits

[(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of his duties in or for the Department of Medicine and Surgery shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his estate) whose act or omission gave rise to such claim.]

(a) *The remedy—*

(1) *against the United States provided by sections 1346(b) and 2672 of title 28, or*

(2) *through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of title 28,*

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of his duties in or for the Department of Medicine and Surgery shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his estate) whose act or omission gave rise to such claim.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person, against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Administrator to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for

the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Administrator.

(c) Upon a certification by the Attorney General that the defendant was acting in the scope of his employment in or for the Department of Medicine and Surgery at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. [Should a United States district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.] *After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of his office or employment, the case shall be remanded to the State court.*

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) *The Administrator may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to which the immunity provisions of this section apply (as described in subsection (a)), for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment (including the conduct of clinical studies or investigations) in the exercise of his duties in or for the Department of Medicine and Surgery, if such person is assigned to a foreign country, detailed to a State or political subdivision thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States provided by sections 1346 (b) and 2672 of title 28, for such damage or injury.*

§ 4117. Contracts for scarce medical specialist services

[The Administrator may enter into contracts with medical schools and clinics to provide scarce medical specialist services at Veterans' Administration facilities (including, but not limited to, services of radiologists, pathologists, and psychiatrists).]

The Administrator may enter into contracts to provide scarce medical specialist services at Veterans' Administration facilities with medical schools, clinics, and any other group or individual capable of furnishing such services (including, but not limited to, services of physicians, dentists, nurses, technicians, and other medical support personnel).

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PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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5057. Reports to Congress.

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Subchapter II—Procurement and Supply

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§ 5012. Authority to procure and dispose of property and to negotiate for common services

(a) The Administrator may lease for a term not exceeding three years lands or buildings, or parts or parcels thereof, belonging to the United States and under his control. *Any lease made pursuant to*

this subsection to any public or nonprofit organization may be made without regard to the provisions of section 5 of title 41. Notwithstanding section 303b of title 40 or other provision of law, a lease made pursuant to this subsection to any public or nonprofit organization may provide for the maintenance, protection, or restoration, by the lessee, of the property leased, as a part or all of the consideration for the lease. Prior to the execution of any such lease, the Administrator shall give appropriate public notice of intention in the press of the community in which the lands or buildings to be leased are located. The proceeds from such leases, less expenses for maintenance, operation, and repair of buildings leased for living quarters, shall be covered into the Treasury of the United States as miscellaneous receipts.

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Subchapter IV—Sharing of Medical Facilities, Equipment, and Information

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§ 5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when he determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in paragraphs (1) and (2) below, between Veterans' Administration hospitals and other hospitals ([or medical schools] or other medical installations having hospital facilities) or medical schools or clinics in the medical community:

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

The Administrator may determine the geographical limitations of a medical community as used in this section.

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment. Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical appropriation.

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Veterans' Administration facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Veterans' Administration facility shall apply to veterans treated hereunder.

§ 5056. [Coordination with] *Coordinating with and participating in* programs carried out under the Heart Disease, Cancer, and Stroke Amendments of 1965

The Administrator, to the extent feasible without interfering with the medical care and treatment of veterans, is authorized to participate in programs under title IX of the Public Health Service Act, and the Administrator and the Secretary of Health, Education, and Welfare, shall, to the maximum extent practicable, coordinate programs carried out under this subchapter and programs carried out under such title IX of the Public Health Service Act. Nothing in this section shall be construed to authorize the furnishing of care in any Veterans Administration facility to any individual not eligible for such care under other provisions of this title.

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